## JOHN C. AMONSON

IBLA 72-105

Decided December 11, 1972

Appeal from a decision of the Idaho State Office, Bureau of Land Management, rejecting in part public sale application, I-4497.

Affirmed.

Public Sales: Applications -- Public Sales: Sales under Special Statutes --

Withdrawals and Reservations: Effect of --Withdrawals and Reservations: Power Sites

An application filed pursuant to the Act of September 26, 1968, 82 Stat. 870, 43 U.S.C. § 1431-1435 (1970), for public sale of land included in a power site reserve is properly rejected as the land affected by the withdrawal is not subject to appropriation or disposal until the withdrawal is revoked and the land restored to entry.

Withdrawals and Reservations: Effect of

Lands which have been withdrawn from entry under Executive Order remain so withdrawn until the revocation or modification of the withdrawal order, and it is immaterial whether the lands are presently being, or have ever been, used for the purpose for which they are withdrawn.

APPEARANCES: John C. Amonson, pro se.

## OPINION BY MR. HENRIQUES

This is an appeal from a decision of the Idaho State Office, BLM, rejecting petition-application (I-4497) 1/ of appellant, pursuant to the Act of September 26, 1968 2/ as to the NE 1/4 NW 1/4, sec. 26, T. 17 N., R. 24 E., B.M., Idaho. The tract in question was withdrawn by Executive Order on February 28, 1912, and reserved for powersite purposes.

<sup>1/</sup> The petition-application described a total of 119.28 acres, including also SE 1/4 SW 1/4 sec. 32 T. 17 N., R. 21 E., and NE 1/4 NW 1/4 sec. 26, T. 17 N., R. 24 E., B.M., Idaho.

<sup>2/ 82</sup> Stat. 870, 43 U.S.C. § 1431-1435 (1970).

## IBLA 72-105

Appellant contends that this subdivision is more suitable for private ownership than for powersite purposes.

However meritorious the argument of appellant may be, the Department has consistently held that until such time as a withdrawal is revoked and there has been a restoration to entry, the land affected by the withdrawal is not subject to appropriation and disposal. Rowe M. Bolton, 5 IBLA 226 (1972), Donald E. Miller, 2 IBLA 309 (1971). Though the land has not been used and may not be used for the purpose for which it was withdrawn, it is the legal effect of a withdrawal that is determinative of the question of the availability of land for entry and the actual use to which the land has been put is immaterial. David W. Harper, et al., 74 I.D. 141 (1967).

Accordingly, the application was properly rejected as to the land withdrawn for powersite purposes.

Appellant is not precluded from petitioning for restoration of the tract in question for entry and use, although there is no assurance of the success of such a venture.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

	Douglas E. Henriques, Member
We concur:	
Anne Poindexter Lewis, Member	
Joseph W. Goss, Member.	

8 IBLA 347